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In the Supreme Court of the United States

OCTOBER TERM, 1964.

No. 579.

ST. LUKE'S HOSPITAL ASSOCIATION OF CLEVELAND, OHIO, OF THE METHODIST CHURCH,
a non-profit corporation,
Petitioner,

vs.

UNITED STATES OF AMERICA,
Respondent.

PETITION FOR A WRIT OF CERTIORARI
To the United States Court of Appeals
For the Sixth Circuit.

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a non-profit corporation,
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vs.

UNITED STATES OF AMERICA,
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PETITION FOR A WRIT OF CERTIORARI
To the United States Court of Appeals
For the Sixth Circuit.

Petitioner, Saint Luke's Hospital Association of Cleveland, Ohio, of the Methodist Church, prays that a writ of certiorari issue to review the judgment of the United States Court of Appeals for the Sixth Circuit entered in the above-entitled case June 18, 1964.

A copy of this judgment and order as well as the judgment of the United States District Court for the Northern District of Ohio are printed in the Appendix hereto at p. 55 and p. 31 respectively.

CITATION TO OPINIONS BELOW.

The Memorandum Opinion of the United States District Court for the Northern District of Ohio, printed herewith at App. p. 13 is reported in 212 Fed. Supp. 387. The Opinion of the United States Court of Appeals for the Sixth Circuit is reported in 333 F. 2d 157 and is printed herewith at App. p. 31.

JURISDICTION.

The judgment of the United States Court of Appeals for the Sixth Circuit was entered on June 18, 1964 (App. p. 55). The jurisdiction of this Court is invoked under 28 U. S. C. § 1254(1).

QUESTION PRESENTED.

Whether or not the exclusion from the Federal Insurance Contributions Act for "interns" as set forth in Int. Rev. Code of 1954, § 3121(b)(13) and Int. Rev. Code of 1939, § 1426(b)(14) applies to all medical school graduates engaged in a program of in-hospital training, without regard to the year of training.

STATUTES INVOLVED.

The statutory provisions involved are Int. Rev. Code of 1954, § 3121(b)(13), formerly Int. Rev. Code of 1939, § 1426(b)(14), and are set forth in the Appendix hereto, p. 56.

STATEMENT OF THE CASE.

Petitioner, Saint Luke's Hospital Association of Cleveland, Ohio, of the Methodist Church, a non-profit corporation, for many years and during all the period involved in this lawsuit has conducted a formal program of in-hospital education and training for graduates of accredited medical schools, designed to prepare such graduates for the practice of medicine in both general and special fields.

To permit those participating in this program to carry out their training, a stipend in varying amounts is granted by the hospital.

The taxes involved are employment taxes imposed by the Federal Insurance Contributions Act (both the so-called employer's tax imposed by § 3111, and the so-called employee's tax, imposed by § 3101, of the Int. Rev. Code of 1954, and the corresponding taxes imposed by § 1410 and § 1400 of the Int. Rev. Code of 1939).

Under the authority of the foregoing sections, employment taxes were assessed and collected from the Petitioner by the District Director of Internal Revenue attributable to the stipends granted by the Petitioner to "residents-in-training"—those individuals engaged in their second or subsequent years of post-graduate training.

Petitioner paid the taxes in question and filed its claim for refund asserting that its residents-in-training were excluded from employment taxes imposed by the Federal Insurance Contributions Act by reason of Int. Rev. Code of 1954, § 3121(b)(13), and the corresponding provision of Int. Rev. Code of 1939, § 1426(b)(14).

This exclusion was enacted into law in 1939, and provides that interns in the employ of a hospital are excluded from the operation of the taxes imposed by the Federal Insurance Contributions Act.

Upon disallowance of Petitioner's claim for refund, the action was instituted in the Federal District Court for the Northern District of Ohio under 28 U. S. C. § 1346 to recover employment taxes and interest claimed to have been illegally assessed against the hospital and its medical school graduates engaged in their second and subsequent years of in-hospital training. Judgment in the amount of $19,301.39 was rendered by the District Court in favor of the Petitioner.

In its Memorandum Opinion, after summarizing the respective contentions of the parties, the District Court

found that the basic question presented for determination was the meaning and scope of the word "intern" as used by Congress in the exclusionary language of Int. Rev. Code of 1954, § 3121(b)(13) (formerly Int. Rev. Code of 1939, § 1426(b)(14)). (App. p. 16.)

The District Court reasoned that the meaning of the words of this statute must be taken in the sense in which they were understood at the time of enactment. The District Court, therefore, focused its attention on the year 1939, the time of the amendment of the Social Security Act providing for the exclusion of "interns" from the coverage of the Act (App. p. 16). It found that in 1939, as contended by the Petitioner, the common and ordinary meaning of the word "intern" encompassed any medical school graduate engaged in any year of in-hospital training, i.e., interns and residents-in-training (App. p. 18).

In rejecting the Respondent's contention that the word "intern" was used by Congress in a restrictive and technical sense, the District Court subscribed to the well-recognized rule of statutory construction that legislation, when not expressed in technical terms, "is addressed to the common run of men and is therefore to be understood according to the sense of the thing, as the ordinary man has rights to rely on ordinary words addressed to him." (App. p. 20.)

The District Court further pointed out that when a word in a statute has both a technical and a common and ordinary meaning, the latter meaning will prevail over the former in the absence of any indication that the word was used in its technical sense. (App. p. 20.) The District Court concluded that the technical meaning sometimes ascribed in medical circles to the words "intern" and "resident" was not the understanding and intent of Congress in its use of the word "intern" in the 1939 Amendment to

the Social Security Act, since this Act was in the nature of general legislation directed to the public at large. (App. p. 22.)

The District Court said:

> "* * * Congress utilized the term 'intern' in 1939, in enacting § 1426(b)(14), in its broad generic sense, and that it was the intention of Congress thereby to exclude from coverage under the Social Security Act all medical school graduates engaged in a program of in-hospital training. The foundation for this conclusion goes deeper than reliance upon rules of statutory construction, and reflects, in the Court's opinion, a general Congressional attitude toward the medical graduate in relation to the Social Security program." (App. p. 23.)

The District Court also noted that self-employed doctors are excluded from coverage under the Social Security Act and that the majority of individuals after completing a period of in-hospital training, become self-employed doctors. (App. p. 23.) In the words of the District Court:

> "The span of most residency programs is from one to four years. It is most difficult to accept an interpretation of the statute which would result in exemption of the medical graduate for his first year of in-hospital training and during his entire professional life as a self-employed physician, and yet include him within the scope of the Social Security Act for the interim period of his residency." (App. p. 23.)

The District Court thereafter made the following finding:

> "It is the Court's finding that the exemption from the Social Security Act for 'interns' as set forth in § 3121(b)(13) applies to all medical graduates engaged in a program of in-hospital training, without regard to the year of training, and includes that group

> which are now known and which were then known as 'residents' or 'residents-in-training' within the medical profession in the year 1939." (App. p. 27.)

Upon appeal, the judgment of the District Court was reversed and remanded for entry of judgment for Respondent.

REASONS FOR GRANTING THE WRIT.

1. The Court of Appeals has so far departed from the accepted and usual course of judicial proceedings in reversing the judgment of the District Court as to call for the exercise of this Court's power of supervision. Specifically we maintain that the Court of Appeals erred in the following respects:

a. In complete disregard of Rule 52(a) Federal Rules of Civil Procedure and contrary to accepted legal principles, the Court of Appeals has set aside the findings of the District Court although it failed to demonstrate that such findings were "clearly erroneous." *United States v. United States Gypsum Co.*, 333 U. S. 364 (1948), *United States v. Oregon State Medical Society*, 343 U. S. 326 (1952), *McAllister v. United States*, 348 U. S. 19 (1954) and *Commissioner v. Duberstein*, 363 U. S. 278 (1960).

The absence of the required definite and firm conviction that the District Court had erred is exhibited in the following comment by the Court of Appeals:

> "As to the interpretation of the 1939 amendment, we are unable to agree—albeit we recognize that reasonable minds could easily differ on issues of interpretation as finely spun as these." (App. p. 36.)

In similar situations, appellate courts of other circuits have concluded that "If, from established facts, reasonable men might draw different inferences, appellate

courts may not substitute their judgment for that of the trial court." *Federal Security Insurance Company v. Smith*, 259 F. 2d 294 (10th Cir., 1958), *Wunderlich Contracting Company v. United States*, 240 F. 2d 201 (10th Cir., 1957) and *Lindsey v. Oregon-Washington Plywood Company*, 287 F. 2d 710 (10th Cir., 1961).

Consequently, the Court of Appeals has prejudicially erred by "exercising * * * trial functions conferred by law upon the district courts." *Schneider v. Kelm*, 237 F. 2d 721 (8th Cir., 1956) and *Pendergrass v. New York Life Ins. Co.*, 181 F. 2d 136 (8th Cir., 1950). Its decision is in conflict in principle with the aforecited decisions of other circuits and is at variance with the criteria established by the Supreme Court. *United States v. United States Gypsum Co., supra.*

b. Furthermore, the conclusion of the Court of Appeals, that Congress did not intend that the word "intern" be used in its common and ordinary sense as it appears in the statute, is unsupported by and contrary to the evidence.

While acknowledging that in order to determine the intent of Congress in its use of the word "intern," it is necessary "to view the language of this 1939 statutory amendment in the light of 1939 facts and meanings" (App. p. 37), the Court of Appeals departs from its stated objective and attempts to support its decision by reference to the following:

(1) A 1960-61 publication. (App. p. 39).

(a) An unrelated 1947 statute. (App. p. 43).

(3) An opinion of the Ohio Supreme Court rendered some 20 years after the enactment of the provision in question. (App. p. 41).

(4) An unfounded assumption as to the expertise of the Congressional Committee drafting the legislation in question in 1939 which was applied to negative the common and ordinary meaning of the word intern. (App. p. 42.)

(5) A House Ways and Means Committee Report which distinguishes between the term intern and resident doctor (App. p. 42)—not intern and resident-in-training—it being clearly established that a resident doctor was one who had completed his formal in-hospital training and was employed full-time on a hospital staff as a physician or surgeon. (R. 67a, 82a, 24b, 37b.)

c. The Court of Appeals departed from accepted legal principles and prejudicially erred in considering extraneous matters submitted in response to hypothetical questions which assumed unlikely instances of death of doctor-trainees following longer periods of in-hospital training than established by the evidence. Not only were the hypotheses unrealistic, but the Court of Appeals further erred by (1) ignoring those decisions which prohibit the introduction of new evidence at the appellate level, *Realty Acceptance Corp. v. Montgomery*, 284 U. S. 547 (1932) and *Hazel-Atlas Glass Co. v. Hartford-Empire Co.*, 322 U. S. 238 (1944) (O. Roberts, J., dissenting), and (2) accepting as true certain figures quoted by counsel for Respondent from a 1961 issue of Medical World News. These figures—from which the Court of Appeals drew the conclusion that "It also is obvious from the figures supplied by the government response that far more doctors achieve full and permanent coverage under Social Security than is commonly thought to be the case" (App. p. 44)—were entirely unrelated to the year 1939 and would have been rejected as the rankest form of hearsay if offered during the course of trial in the District Court.

d. The Court of Appeals also prejudicially erred in failing to recognize that the primary purpose of the Social Security Act is to provide retirement benefits.[1]

When the Appellate Court determined to investigate the economics involved by means of the aforementioned hypothetical questions, they, in fairness, should have sought information as to whether residents-in-training would normally acquire credits sufficient to qualify them for retirement benefits at the end of their careers as private practitioners. Instead, the hypothetical questions first enlarged the span of residency programs beyond the "one to four years" established by the evidence, and then assumed incidents of death of "married" residents-in-training in circumstances which are inconsistent with life expectancy tables. The Court of Appeals' resulting conclusion that "Social Security coverage does have a definite beneficial value in terms of insurance for the married residents-in-training" (App. p. 44) completely overlooks the tremendous cost[2] which would be incurred by hospitals and doctor-trainees in order to provide death benefits in rare cases by Social Security tax payments rather than by ordinary group life insurance policies.

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[1] The rationale of the Unemployment Compensation Act as well as the Social Security Act is discussed by Justice Cardozo in the case of *Helvering v. Davis*, 301 U. S. 619, 641 (1937). Justice Cardozo stated:

> "* * * But the ill is all one, or at least not greatly different, whether men are thrown out of work because there is no longer work to do or because the disabilities of age made them incapable of doing it. Rescue becomes necessary irrespective of the cause. *The hope behind this statute is to save men and women from the rigors of the poor house as well as from the haunting fear that such a lot awaits them when journey's end is near.*" (Emphasis supplied.)

[2] Combined employer-employee Social Security taxes now amount to 7¼% of wages and will reach 9¼% by 1968. (Int. Rev. Code of 1954, §§ 3101 and 3111.)

2. The correct interpretation of Int. Rev. Code of 1954, § 3121(b)(13) is of great importance to all hospitals throughout the United States and an untold number of medical school graduates who are and will be engaged in programs of in-hospital training, which the Court of Appeals observed have been "greatly expanded" since 1939. (App. p. 44.)

The Petitioner is only one of many hospitals which maintains and conducts programs of in-hospital training for medical school graduates. In 1953, the first year of assessment, there were over 725 such non-governmental hospitals in this country conducting in-hospital training programs in which over 16,000 residents-in-training participated.[3] While our record does not precisely reflect the numerical increase of hospitals and doctor-trainees over the last decade, it is evident that a large segment of the population is affected and that determination of this case by the Supreme Court is plainly in the public interest.

3. The correct interpretation of the federal statute involved by the Supreme Court is also of significant and continuing importance to the administration of the Social Security Act.

The issue presented in this case is the subject of other cases now pending in the lower courts as well as numerous claims for refund filed on behalf of hospitals similarly burdened with ever increasing costs of operation and patient care. Unless this case is reviewed by this court of last resort, hospital administrators, members of the medical profession and the Social Security Administration will continue to be uncertain as to their respective duties and obligations, and the cost of all resulting litigation will ultimately be borne by the general public.

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[3] Government's Exhibit No. 2.

CONCLUSION.

For the foregoing reasons, this petition for a writ of certiorari should be granted.

Respectfully submitted,

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